IN THE COURT OF APPEALS

FIRST APPELLATE DISTRICT OF OHIO

HAMILTON COUNTY, OHIO

YELLOWBOOK, INC., Plaintiff-Appellee, vs. DEARFIELD, KRUER & COMPANY, LLC, Defendant, and DAVID A. KRUER, Defendant-Appellant.	: : : : : : : :	APPEAL NO. C-150771 TRIAL NO. 12CV-14149 *JUDGMENT ENTRY.*

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Defendant-appellant David A. Kruer appeals the judgment of the Hamilton County Municipal Court denying his motion to vacate a 2012 default judgment entered in favor of plaintiff-appellee Yellowbook, Inc., on Yellowbook's claims that Kruer had failed to pay for his law firm's advertising.

In July 2010, Kruer executed an agreement for Yellowbook to print an advertisement for his law firm, Dearfield, Kruer & Company, LLC ("DKC"), in its Greater Cincinnati area directory. At the time, Kruer was at DKC's Covington,

Kentucky office. He signed the agreement in both his individual capacity and on behalf of DKC.

In June 2012, Yellowbook instituted its action against Kruer and DKC for nonpayment. In July 2012, the trial court granted Yellowbook's motion for a default judgment against Kruer.

Three years later, on September 3, 2015, Kruer filed a motion to vacate the default judgment for lack of personal jurisdiction and lack of service of process, or, in the alternative, a motion for relief from judgment under Civ.R. 60(B). The trial court denied the motion.

In his first assignment of error, Kruer argues that the trial court erred by denying his motion to vacate the default judgment for lack of personal jurisdiction. Whether an Ohio court has personal jurisdiction over a nonresident defendant involves a two-part inquiry. *U.S. Sprint Communications Co. Ltd. Partnership v. Mr. K's Foods, Inc.*, 68 Ohio St.3d 181, 183, 624 N.E.2d 1048 (1994). First, we must determine if Ohio's long-arm statute, R.C. 2307.382, and Civ.R. 4.3(A) apply to confer jurisdiction. *Id.* at 184. If so, we must decide whether exercising personal jurisdiction "would deprive the defendant of the right to due process of law pursuant to the Fourteenth Amendment to the United States Constitution." *Id.*

The record demonstrates that Kruer contracted for the provision of services in Ohio when he executed the Yellowbook agreement as an individual obligor and on behalf of DKC for its Ohio offices. This conduct falls within the broad language of R.C. 2307.382(A)(2) and Civ.R. 4.3(A)(2). *See, e.g., Morgan Adhesives Co. v. Sonicor Instrument Corp.*, 107 Ohio App.3d 327, 333, 668 N.E.2d 959 (9th Dist.1995).

Next, we turn to the question whether the assertion of personal jurisdiction by an Ohio court would comport with due process. The Due Process Clause of the Fourteenth Amendment requires that a court exercise jurisdiction only if a nonresident defendant has sufficient minimum contacts with the state such that summoning the party to Ohio would not "offend 'traditional notions of fair play and substantial justice.' " *Walden v. Fiore*, 134 S.Ct. 1115, 1121, 188 L.Ed.2d 12 (2014), citing *Internatl. Shoe Co. v. Washington*, 326 U.S. 310, 316, 66 S.Ct. 154, 90 L.Ed. 95 (1945).

In this case, the record demonstrates that Kruer, an Ohio-licensed attorney and a member of DKC, purposefully availed himself of the privilege of acting in Ohio by incorporating DKC in Ohio as a limited liability corporation, and by his firm's operating offices in three Ohio cities. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475, 105 S.Ct. 2174, 85 L.Ed.2d 528 (1985); *Kauffman Racing Equip., LLC v. Roberts*, 126 Ohio St.3d 81, 2010-Ohio-2551, 930 N.E.2d 784, ¶ 69. Second, Yellowbook's claims arise from Kruer's contacts with Ohio, namely his failure to pay for an advertisement that listed DKC's Ohio offices, and specifically highlighted its West Chester, Ohio office with a much larger font. *See Kauffman* at ¶ 70, citing *CompuServe, Inc. v. Patterson*, 89 F.3d 1257, 1267 (6th Cir.1996). And finally, Kruer intentionally directed his conduct toward Ohio residents and the effects of his conduct occurred in Ohio. *See Burger King* at 473; *Calder v. Jones*, 465 U.S. 783, 788-789, 104 S.Ct. 1482, 79 L.Ed.2d 804 (1984).

Therefore, we hold that an Ohio court's exercise of personal jurisdiction comports with R.C. 2307.382 and Civ.R. 4.3, and with the requirements of the Due Process Clause. The trial court did not err by denying Kruer's motion to vacate the judgment for lack of personal jurisdiction. We overrule the first assignment of error.

In his second assignment of error, Kruer argues that the trial court erred by denying his motion to vacate the default judgment because it was void for improper service of process. Under Civ.R. 4.3(B), service of process may be made on a nonresident defendant by certified mail. Service by certified mail is evidenced by a return receipt signed by any person. Civ.R. 4.1(A)(1)(a). Certified mail is effective upon delivery even if the receipt is signed by someone other than the named addressee. *See Akron-Canton Regional Airport Auth. v. Swinehart*, 62 Ohio St.2d 403, 405, 406 N.E.2d 811 (1980), citing *Castellano v. Kosydar*, 42 Ohio St.2d 107, 110, 326 N.E.2d 686 (1975). This court has held that certified-mail service was complete where it had been sent to a defendant's residence and had been signed for by his adult daughter. *See Claims Mgt. Servs. v. Tate*, 1st Dist. Hamilton No. C-000034, 2000 Ohio App. LEXIS 4474 (Sept. 29, 2000).

In this case, the complaint was sent by certified mail to Kruer's residence and was signed for by his adult son. Although Kruer alleged that his son had been suffering from a "yet to be diagnosed mental condition" and may have disposed of the mail, he did not suggest that the condition rendered his son incapable of accepting service. Therefore, we hold that the default judgment against Kruer was not void for failure of service. *See id.* We overrule the second assignment of error.

In his third assignment of error, Kruer argues that the default judgment should have been vacated pursuant to Civ.R. 60(B). Kruer acknowledges that his argument about lack of notice falls within the "excusable neglect" provision listed in Civ.R. 60(B)(1). A motion filed under that subsection must be filed within one year of the entry of the judgment. Civ.R. 60(B); *Strack v. Pelton*, 70 Ohio St.3d 172, 175, 637 N.E.2d 914 (1994). In this case, Kruer's motion was filed more than three years after the judgment was entered, so the trial court was without authority to grant the

motion. *Tate*, citing *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus. Kruer maintains that the judgment should have been vacated under Civ.R. 60(B)(5), the catch-all provision, which only imposes a "reasonable time" requirement. However, a party may not use Civ.R. 60(B)(5) to set aside a judgment where, as here, a more specific provision of Civ.R. 60(B) applies. *Caruso-Ciresi, Inc. v. Lohman*, 5 Ohio St.3d 64, 66, 448 N.E.2d 1365 (1983). Therefore, the trial court did not err by denying Kruer's untimely Civ.R. 60(B) motion. We overrule the third assignment of error and affirm the trial court's judgment.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HENDON, P.J., MOCK and **STAUTBERG, JJ.**

To the clerk:

Enter upon the journal of the court on November 23, 2016

per order of the court _____.
Presiding Judge